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8 JOHN VARIAN, TIMOTHY P. WALBERT,  
PAUL D. RUBIN AND JACK L. WYSZOMIERSKI  
9 and Nominal Defendant XOMA CORPORATION

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12

13 DEBORAH A. FIESER, derivatively on  
behalf of XOMA CORPORATION,

14 Plaintiff,

15 v.

16 W. DENMAN VAN NESS, WILLIAM K.  
17 BOWES, JR., PETER BARTON HUTT,  
JOSEPH M. LIMBER, KELVIN M. NEU,  
18 PATRICK J. SCANNON, JOHN  
VARIAN, TIMOTHY P. WALBERT,  
19 PAUL D. RUBIN AND JACK L.  
WYSZOMIERSKI and Nominal Defendant  
20 XOMA CORPORATION,

21 Defendants.  
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Case No. 3:15-CV-05236-JST

**STIPULATION AND ~~PROPOSED~~ ORDER  
TO RESCHEDULE CASE MANAGEMENT  
CONFERENCE**

Judge: Honorable Jon S. Tigar

1 Pursuant to Civil Local Rules 6-2 and 7-12, Plaintiff Deborah A. Fieser (“Fieser”),  
2 Jeffrey Csoka (“Cskoka”), and Defendants W. Denman Van Ness, William K. Bowes, Jr., Peter  
3 Barton Hutt, Joseph M. Limber, Kelvin M. Neu, Patrick J. Scannon, John Varian, Timothy P.  
4 Walbert, Paul D. Rubin, Jack L. Wyszomierski, and Nominal Defendant XOMA Corporation  
5 (collectively, “Defendants”), by and through their respective counsel, hereby agree and stipulate  
6 that good cause exists to request an order from the Court rescheduling the initial Case  
7 Management Conference currently set for August 23, 2017 in this action and related action at  
8 Case No. 3:15-CV-05429-JST to December 13, 2017, and to adjust accordingly the related  
9 deadlines set forth therein.

10 WHEREAS, Joseph Markette (“Markette”) filed a securities class action lawsuit against  
11 XOMA, John Varian, and Paul Rubin relating to XOMA’s EYEGUARD-B study in the United  
12 States Court for the Northern District of California, captioned *Markette v. XOMA Corp., et. al.*,  
13 3:15-CV-3425-HSG, on July 24, 2015 (the “Securities Action”);

14 WHEREAS, Plaintiff Fieser filed this related shareholder derivative action, captioned  
15 *Fieser v. W. Denman Van Ness, et. cal.*, Case No. 3:15-CV-05236-JST, on November 16, 2015  
16 (“*Fieser* Derivative Action”);

17 WHEREAS, Csoka filed another related shareholder derivative action in the United  
18 States Court for the Northern District of California, captioned *Csoka v. John Varian, et. al.*, Case  
19 No. 3:15-CV-05429-JST, on November 25, 2015 (“*Csoka* Derivative Action”);

20 WHEREAS, as of April 25, 2016, both the *Fieser* Derivative Action and the *Csoka*  
21 Derivative Action are before Hon. Jon S. Tigar;

22 WHEREAS, on May 9, 2016, the Court stayed the *Fieser* Derivative Action pending  
23 future developments in the Securities Action;

24 WHEREAS, on May 19, 2016, the Court stayed the *Csoka* Derivative Action pending  
25 future developments in the Securities Action;

26 WHEREAS, on May 24, 2016, the Court in the Securities Action set a briefing schedule  
27 requiring Markette to file an amended complaint by July 8, 2016, Defendants to respond to the  
28 amended complaint by August 11, 2016; Markette to file an opposition to the response by

1 September 15, 2016, Defendants to file a reply brief by September 29, 2016, and for the hearing  
2 to be held on October 13, 2016;

3 WHEREAS, on July 8, 2016, Markette filed an amended complaint adding for the first  
4 time Kelvin Neu as a defendant;

5 WHEREAS, on July 22, 2016, the parties in the Securities Action filed a stipulation to  
6 amend the case management schedule;

7 WHEREAS, on July 22, 2016, the Court in the Securities Action granted in part and  
8 denied in part the parties' stipulation to amend the case management schedule, requiring  
9 Defendants to respond to the amended complaint by September 2, 2016; Markette to file an  
10 opposition to the response by October 7, 2016; Defendants to file a reply brief by October 21,  
11 2016; and for the hearing to be held on November 3, 2016;

12 WHEREAS, the parties filed a stipulation to reschedule the initial Case Management  
13 Conference in this action on August 16, 2016;

14 WHEREAS, on August 19, 2016, this Court ordered the *Fieser* and *Csoka* Derivative  
15 Actions related, extended the stay, and denied Defendants' stipulation as moot;

16 WHEREAS, on September 2, 2016, Defendants filed a motion to dismiss the Securities  
17 Action;

18 WHEREAS, on September 15, 2016, the Court in the Securities Action continued the  
19 motion to dismiss hearing to December 15, 2016;

20 WHEREAS, on October 7, 2016, Plaintiff Markette filed an opposition to Defendants'  
21 motion to dismiss;

22 WHEREAS, on October 21, 2016, Defendants filed a reply in support of their motion to  
23 dismiss;

24 WHEREAS, on December 14, 2016, the Court in the Securities Action vacated the  
25 hearing previously scheduled for December 15, 2016, and took the pending motion to dismiss  
26 filings under submission;

27 WHEREAS, on May 2, 2017, the parties filed a second stipulation to reschedule the  
28 initial Case Management Conference;

1 WHEREAS, this Court granted the stipulation in the *Fieser* Derivative Action on May 3,  
2 2017, and granted the stipulation in the *Csoka* Derivative Action on May 5, 2017, and  
3 rescheduled the initial Case Management Conference to August 23, 2017;

4 WHEREAS, on May 26, 2017, the Court in the Securities Action ordered the parties to  
5 submit simultaneous supplemental briefing in light of the Ninth Circuit's recent opinion in *City*  
6 *of Dearborn Heights Act 345 Police & Retirement Sys. v. Align Tech., Inc.*, No. 14-16814, 2017  
7 WL 1753276 (9th Cir. May 5, 2017);

8 WHEREAS, on June 9, 2017, both parties in the Securities Action filed supplemental  
9 briefing in support of their respective motion to dismiss filings;

10 WHEREAS, the Court in the Securities Action has yet to issue an order on the motion to  
11 dismiss;

12 WHEREAS, the initial Case Management Conference is currently scheduled for August  
13 23, 2017 in both the *Fieser* and *Csoka* Derivative Actions;

14 WHEREAS, in light of the current stay of both the *Fieser* and *Csoka* Derivative Actions  
15 and the status of the Securities Action, the parties believe it would be a waste of judicial and  
16 party resources for the Court and the Parties to conduct the Case Management Conference on  
17 August 23, 2017;

18 WHEREAS *Fieser*, *Csoka*, and Defendants further agree that the Case Management  
19 Conference should be rescheduled to December 13, 2017, and all related deadlines adjusted  
20 accordingly.

21 NOW THEREFORE, THE FOLLOWING IS HEREBY STIPULATED by and between  
22 the parties, through their respective counsel:

23 1. The Case Management Conference will be rescheduled to December 13, 2017,  
24 and all related deadlines (including ADR deadlines) adjusted accordingly.

25 IT IS SO STIPULATED.  
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1 Dated: August 9, 2017

COOLEY LLP

3 /s/ Jessica Valenzuela Santamaria

4 Jessica Valenzuela Santamaria (220934)

5 Attorneys for Defendants W. DENMAN VAN NESS,  
6 WILLIAM K. BOWES, JR., PETER BARTON HUTT,  
7 JOSEPH M. LIMBER, KELVIN M. NEU, PATRICK J.  
8 SCANNON, JOHN VARIAN, TIMOTHY P.  
WALBERT, PAUL D. RUBIN AND JACK L.  
WYSZOMIERSKI and Nominal Defendant XOMA  
CORPORATION

9 Dated: August 9, 2017

GREEN & NOBLIN, P.C.

10 and

11 FEDERMAN & SHERWOOD  
12 WILLIAM B. FEDERMAN

13 /s/ Robert S. Green

14 Robert S. Green (136183)

15 Attorneys for Plaintiff DEBORAH A. FIESER

16 Dated: August 9, 2017

17 LAW OFFICE OF ADAM R. BERNSTEIN  
18 ADAM BERNSTEIN (132982)

19 /s/ Adam Bernstein

Adam Bernstein (132982)

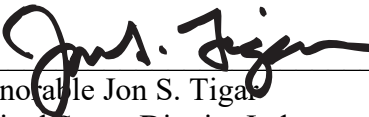
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Attorneys for Plaintiff JEFFREY CSOKA

1 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

2  
3 DATED: August 10, 2017

  
Honorable Jon S. Tigas  
United States District Judge

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Dated: August 9, 2017

Jessica Valenzuela Santamaria (220934)

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